BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JENNIFER L. SMITH	)	
Claimant	)	
VS.	)	
	)	Docket No. 241,622
INTENSIVA HOSPITAL OF TOPEKA	)	
Respondent	)	
AND	)	
	)	
NATIONAL UNION FIRE INSURANCE	)	
COMPANY OF NEW YORK	)	
Insurance Carrier	)	

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Brad E. Avery dated May 14, 1999. The Administrative Law Judge granted claimant benefits in the form of medical treatment and ordered Dr. Sharon L. McKinney to be the authorized treating physician until further order.

ISSUES

(1) Did claimant suffer accidental injury arising out of and in the course of her employment with respondent?

(2) Did claimant provide timely notice of accident?

(3) Were the medical recommendations for physical therapy by Dr. Todd Trobough or Dr. Sharon L. McKinney for the injury of September 27, 1998, or for a non-work-related condition?

(4) Did the Administrative Law Judge exceed his jurisdiction by ordering medical treatment with Dr. Sharon L. McKinney when Dr. Craig L. Vosburgh was the authorized treating physician?

(5) Has claimant properly alleged a date of accident on January 1, 1999, and, if so, have timely notice and timely written claim been submitted?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant suffered accidental injury on September 27, 1998, when she fell over a lift, damaging her right knee and right shoulder. This accident is stipulated to by the parties, and respondent acknowledges notice and written claim were timely made.

Claimant received medical treatment from the St. Francis Hospital emergency room and was referred to Dr. Craig L. Vosburgh, an orthopedic surgeon, for examination and treatment. Claimant was also referred to Dr. Peter Lepse for an examination and second opinion. Claimant was off work until November 2, 1998, at which time she was returned to work light duty. On November 19, 1998, Dr. Vosburgh released claimant to return to work regular duty, finding that she had reached maximum medical improvement. In his February 23, 1999, letter, Dr. Vosburgh noted that claimant was at maximum medical improvement with regard to the knee and the shoulder, and suffered no permanent impairment to either. There is no mention in any of the medical records before January 1, 1999, of claimant's back or hip.

On January 1, 1999, while either ambulating a patient or helping lift a patient, claimant experienced pain in her right hip. Medical reports from Dr. Sharon L. McKinney, who examined claimant on January 18, 1999, also indicate that the pain was in her low back. On January 4, 1999, claimant was examined by Dr. Todd Trobough, an obstetrician and gynecologist. At that time, Dr. Trobough opined that claimant's problem was sciatica. Dr. Trobough explained that claimant was pregnant and the baby was pressing on the sciatic nerve, causing the symptoms. As noted earlier, claimant was then examined by Dr. McKinney on January 18, 1999. Dr. McKinney opined that, on September 27, 1998, claimant strained her right latissimus dorsi, right subscapularis, posterior hip girdle and her knee. Dr. McKinney went on to speculate that the original shoulder injury was muscular to the subscapularis and the latissimus dorsi. Then, when claimant returned to work, she began using her arm for lifting and carrying, and irritated the latissimus dorsi at its origin, thus giving her the back pain.

Respondent contends that claimant's back injury stems from either the lifting or ambulating incident of January 1, 1999, and is thus a new and separate accident for which claimant must file a new and separate claim. However, Dr. McKinney's report, which is medically uncontradicted, although factually somewhat suspect, does tie the back and hip injury to the September 27, 1998, fall. While it is difficult to comprehend how the low back can be connected to the shoulder in this manner, the Appeals Board notes that Dr. McKinney is a trained health care professional, and her opinion connecting the back to the shoulder is uncontradicted. When a primary injury under the Workers Compensation

Act arises out of and in the course of a worker's employment, every natural consequence that flows from that injury is compensable if it is a direct and natural result of the primary injury. Gillig v. Cities Service Gas Co., 222 Kan. 369, 564 P.2d 548 (1977). Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

While the Board acknowledges that the medical evidence in this instance raises questions, it nevertheless has not, at this time, been shown to be untrustworthy. Therefore, the Appeals Board finds that, for preliminary hearing purposes, the injury to claimant's low back stems from the September 27, 1998, accident.

The additional orders by the Administrative Law Judge authorizing Dr. McKinney to provide care, including physical therapy, are not issues properly before the Appeals Board on an appeal from a preliminary hearing order. *See* K.S.A. 1998 Supp. 44-534a and K.S.A. 1998 Supp. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated May 14, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1999.

BOARD MEMBER

c: Jack L. Heath, Topeka, KS
Matthew S. Crowley, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director